REMARKS

It is respectfully requested that this application be reconsidered in view of the following remarks and that early examination of the claims in this application be undertaken.

Restriction Requirement

The Office Action set forth a Restriction Requirement requesting Applicant to elect one of the following groups for prosecution on the merits:

Group I Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrimdinyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is aryl,
or compounds of formula (IIa), or (IIc),
Their pharmaceutical compositions and methods of treatment.

Group II Claims 1-3, 6-11, 13, 14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyridazinyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is aryl,
or compounds of formula (IIb),
Their pharmaceutical compositions and methods of treatment.

Group III Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrazinyl;
B (or C) is pyridone or pyrimidone,
Ar^2 is aryl,
or compounds of formula (IId),
Their pharmaceutical compositions and methods of treatment.

Group IV Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or Ib) with the following substituent:

Ar^1 is dioxo-1,2,3-thiadiazolyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is aryl,
or compounds of formula (IIe),
their pharmaceutical compositions and methods of treatment;

Group V Claims 1, 4-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrimdinyl,
B (or C) is bicyclic,
Ar^2 is aryl,
or compounds of formula (IIa) or (IIc),
their pharmaceutical compositions and methods of treatment;

Group VI Claims 1, 4-11, and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyridazinyl,
B (or C) is bicyclic,
Ar^2 is aryl,
or compounds of formula (IIb),
their pharmaceutical compositions and methods of treatment.

Group VII Claims 1, 4-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrazinyl,
B (or C) is bicyclic,
Ar^2 is aryl or heteroaryl,
or compounds of formula (IId),
their pharmaceutical compositions and methods of treatment.

Group VIII Claims 1, 4-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is dioxo-1,2,3-thiadiazolyl,
B (or C) is bicyclic,
Ar^2 is aryl or heteroaryl
or compounds of formula (IIe),
their pharmaceutical compositions and methods of treatment.

Group IX Claims 1, 6-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrimdinyl,
B (or C) is tricyclic,
Ar^2 is aryl or heteroaryl
or compounds of formula (IIa) or (IIc),
their pharmaceutical compositions and methods of treatment.

Group X Claims 1, 6-11 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyridazinyl,
B (or C) is tricyclic,
Ar^2 is aryl or heteroaryl,
or compounds of formula (IIb),
their pharmaceutical compositions and methods of treatment.

Group XI. Claims 1, 6-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrazinyl,
B (or C) is tricyclic,
Ar^2 is aryl or heteroaryl,
or compounds of formula (IId),
their pharmaceutical compositions and methods of treatment.

Group XII Claims 1, 6-12 and 15-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is dioxo-1,2,3-thiadiazolyl,
B (or C) is tricyclic,
Ar^2 is aryl or heteroaryl,
or compounds of formula (IIe),
their pharmaceutical compositions and methods of treatment.

Group XIII Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrimdinyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is heteroaryl,
or compounds of formula (IIa) or (IIc),
their pharmaceutical compositions and methods of treatment.

Group XIV Claims 1-3, 6-11, 13, 14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyridazinyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is heteroaryl,
or compounds of formula (IIb),
their pharmaceutical compositions and methods of treatment.

Group XV Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is pyrazinyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is heteroaryl,
or compounds of formula (IId),
their pharmaceutical compositions and methods of treatment.

Group XVI Claims 1-3, 6-14 and 17-27 (part of each), drawn to compounds of formula (Ia) or (Ib) with the following substituents:

Ar^1 is dioxo-1,2,3-thiadiazolyl,
B (or C) is pyridone or pyrimidone,
Ar^2 is heteroaryl,
or compounds of formula (IIe),
their pharmaceutical compositions and methods of treatment.

Applicant hereby elects, with traverse, Group I (claims 1-3, 6-14 and 17-27(part of each), the compounds of Formula Ia with the substituents of Formula IIc. Applicants submit that the species elected in their response of November 18, 2002 is consistent with the elected group.

This restriction requirement is traversed for the following reasons:

(a) Restriction Requirement as to Groups 1-27 is Inconsistent with Patent Office's Stated Guidelines Regarding Restriction of Markush Groups

In the restriction requirement, the Examiner has divided Applicants' Claim 1 into sixteen alternative Markush groups. However, such a division of a claim in a restriction requirement is improper because it is inconsistent with the applicable case law and with the Patent Office's stated guidelines for restriction of Markush groups as set forth in MPEP §803.02.

Specifically, in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978), the court articulated the general proposition that:

> "[A]n applicant has a right to have *each* claim examined on the merits. If an applicant submits a number of claims, it may well be that pursuant to a proper restriction requirement, those claims will be dispersed to a number of applications. Such action would not affect the right of the applicant eventually to have each of the claims examined in the form he considers to best define his invention. If, however, a single claim is required to be divided up and presented in several applications, that claim would never be considered on its merits. The totality of the resulting fragmentary claims would not necessarily be the equivalent of the original claim.

> Further, since the subgenera would be defined by the examiner rather than by the applicant, it is not inconceivable that a number of the fragments would not be described in the specification. *Id.* at 331." (Emphasis in original).

In view of the above and similar case law, the Patent Office has set forth the following general policy regarding restriction of Markush-type claims in MPEP §803.02:

> "Since the decisions in *In re Weber*, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and *In re Haas*, 580 F.2d 461, 198 USPQ 334, it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. *In re Harnish*, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and *Ex parte Hozumi*, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984)."

In the present case, the Patent Office has refused to examine Claim 1 in the form Applicants consider to best define their invention and has instead required Applicants to elect only a dissected portion of these claims for prosecution. Such a requirement is clearly improper in view of the applicable case law and the stated policy of the Patent Office. Accordingly, in view of the above, Applicants respectfully request that this restriction requirement which divides Claim 1 into sixteen parts be withdrawn.

(b) Examination of all of the Claims Would Not Impose a Serious Burden On the Examiner

As noted in the MPEP § 803, if an application can be searched and examined without a serious burden, the Examiner must examine the application on the merits, even though it includes claims to independent or distinct inventions. *MPEP § 803* at 800-3.

With regard to the above, Applicants submit that the claims of each of the restricted groups are so interrelated with the claims of the other restricted groups that examination and search necessarily can be done without serious burden. Indeed, a cursory review of this restriction requirement evidences that the claims of numerous groups overlap with the claims of other groups and, accordingly, an examination of one group would invariably require examination of the compounds of such other groups.

In view of the above, Applicants submit that this restriction requirement is in error. Withdrawal of this requirement is requested.

Notwithstanding the above, Applicants expressly reserve their right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

In the unlikely event that the transmittal letter is separated from this document and/or the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 428372001600. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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